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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 LARRY ROSSER,

11 Plaintiff,

12 v.

13 SANCHEZ, et al.,

14 Defendants.  
15 \_\_\_\_\_

Case No. 10-CV-1037-JAH (JMA)

**ORDER DENYING PLAINTIFF'S EX  
PARTE MOTION FOR APPOINTMENT  
OF COUNSEL AND TO REOPEN AND  
EXTEND DISCOVERY PERIOD [Doc.  
No. 110]**

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17 On May 31, 2012, Plaintiff Larry Rosser filed an ex parte motion requesting the  
18 appointment of counsel and to reopen and extend the discovery period. Doc. No. 110.  
19 The basis for both requests appears to be that Plaintiff has encountered difficulties in  
20 obtaining discovery. As such, Plaintiff seeks counsel "to at least conduct and effect  
21 discovery." *Id.* at 1. For the reasons set forth below, Plaintiff's motion is **DENIED**.

22 "[T]here is no absolute right to counsel in civil proceedings." *Hedges v.*  
23 *Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). District  
24 courts have discretion, however, pursuant to 28 U.S.C. § 1915(e)(1), to appoint counsel  
25 for indigent civil litigants upon a showing of "exceptional circumstances." *See Terrell v.*  
26 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). "A finding of exceptional circumstances  
27 requires an evaluation of both 'the likelihood of success on the merits and the ability of  
28 the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues


1 involved.' Neither of these factors is dispositive and both must be viewed together  
2 before reaching a decision.'" Id. (citations omitted).

3 Here, Plaintiff has demonstrated an ability to articulate the factual and legal  
4 bases of his claim with sufficient clarity, and to serve and conduct discovery. The facts  
5 alleged in his First Amended Complaint are not complex. Based on the information  
6 currently before the Court, it is clear that Plaintiff has the competence necessary to  
7 pursue his case. Without more, this Court cannot conclude that there are "exceptional  
8 circumstances" which would warrant the appointment of counsel in Plaintiff's case. Nor  
9 has Plaintiff submitted anything which would suggest he is likely to succeed on the  
10 merits or that it would be in the interests of justice for counsel to be appointed in his  
11 case. Based on the foregoing, the Court **DENIES** Plaintiff's motion for appointment of  
12 counsel.

13 Furthermore, while Plaintiff has set forth various difficulties he has encountered  
14 in discovery, he has set forth no explanation as to why fact discovery should be  
15 reopened nor as to what further discovery he would conduct if the fact discovery period  
16 were reopened. As Plaintiff has not demonstrated good cause to reopen fact discovery,  
17 the Court **DENIES** Plaintiff's motion to reopen and extend the discovery period.

18 **IT IS SO ORDERED.**

19 DATED: June 4, 2012

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21 Jan M. Adler  
22 U.S. Magistrate Judge  
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